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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,725	08/25/2006	Hajime Tsujimoto	1254-0320PUS1	2568
2292 7590 12/11/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SAYALA, CHHAYA D				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/11/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

# Office Action Summary

**Application No.**

10/590,725

**Applicant(s)**

TSUJIMOTO ET AL.

**Examiner**

C. SAYALA

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5/DE)  
Paper No(s)/Mail Date 4/12/2007&11/30/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (US Patent 3950529) or Dudrick et al. (US Patent 5026721) or Jarowski (US Patent 3080234).

Each of these patents teach a composition of amino acids for oral use as a diet supplement. See claim 1 in each patent. Although the claim recites the limitation "pet food for reducing allergy reactions", the fact that the composition is for a pet for reducing its allergies does not lend patentability to an old and known composition. See In re Zierden, 162 USPQ 102, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogilvie et al. (US Patent 6015798) or Shields, Jr. et al. (US Patent 6156355).

Ogilvie et al. shows at Table II, a composition that includes amino acids and rice. Shields, Jr. et al. claim a composition with rice and glutamine at claims 5-7. Again, the decisions in In re Zierden, 162 USPQ 102, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324 hold.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayek et al. (US Patent 7067147) in view of Hall et al. (US Patent 2536171) and Acosta et al. (US Patent 6245803) and further in view of Kemme-Kroonsberg et al. (US Patent 6042872) and Nagata (JVM, vol. 7(6), 1994, pages 491-493) taken with Metcalfe et al. (Editors, "Food Allergy" 3<sup>rd</sup> Edition, Blackwell Publishing, Inc., page 61, 2003).

Hayek et al. teach that dogs and cats suffer from food allergies primarily from proteins that have been controlled in prior art by hydrolyzing such proteins. The patent does not teach using amino acids or plant proteins that have low allergenic properties. Hall teaches that amino acids have been administered where food allergies exist. See col. 1, lines 1-15. Acosta et al. also teach that hypoallergenic compositions are characterized by including free amino acids which are known to be less allergenic or immunogenic. See col. 1, line 20-30. Therefore, based on such disclosures to include free amino acids in a diet intended for an animal that has food allergies would have been an obvious expedient.

Kemme-Kroonsberg teach animal feed compositions that include potato protein. Nagata teaches the inclusion of potato and rice in the diet of an animal that suffers from

food allergies in order to control such a condition. Metcalfe et al. teach that plant proteins such as those obtained from potatoes is considered to be non-allergenic.

Therefore, to combine free amino acids and proteins obtained from plants that are known in the art to be of low allergenicity or non-allergenic would have been obvious, particularly in treating an animal that is already known to be suffering from protein allergies.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference included from the web site (archived pages from 2004) <http://www.wholesomebabyfood.com>, shows that certain foods have been known to cause food allergies and certain other foods have known to be non-allergenic or less allergic. Note the lists provided on pages 2-3 of the web pages. It is to be noted therefore, that the inventor was not the first to invent what foods have low allergenicity or are non-allergenic.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1794**